BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CHARLES EDWARD BROWN, Claimant, ERIC BOLTS, dba BOLTS FLOOR COVERING and BOLTS' FLOORCOVERING, INC., Employer, and HOLIDAY RETIREMENT CORPORATION, dba CHATEAU DE BOISE, Employer, and LIBERTY MUTUAL INSURANCE COMPANY, Surety, Defendants.	**IC 04-009559** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** Filed January 6, 2005

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise, Idaho, on June 15, 2005. Lynn M. Luker and John F. Greenfield, both of Boise, represented Claimant. Glenna M. Christensen of Boise represented Defendant Eric Bolts [Bolts.] Monte R. Whittier of Boise represented Defendant Holiday Retirement Corporation dba Chateau De Boise [Holiday] and Liberty Mutual Insurance Company. Oral and documentary evidence was presented. The parties submitted post-hearing

briefs. This matter came under advisement on September 7, 2005, and is now ready for decision.

ISSUES

As modified and agreed upon by the parties at hearing, the issues to be resolved are:

1. Whether an employer-employee relationship existed between Claimant and Bolts; and,

2. If such an employer-employee relationship existed, whether Holiday was Claimant's statutory employer.

CONTENTIONS OF THE PARTIES

Claimant contends he is an employee of Bolts. Moreover, he is a covered employee for workers' compensation purposes under the statutory employer doctrine regarding Holiday. Claimant should receive benefits for injuries sustained while laying carpet at Chateau De Boise [Chateau.]

Bolts contends Claimant was an independent contractor at the time of his accident and therefore not entitled to benefits. Holiday also contends Claimant was an independent contractor; and, therefore, the statutory employer doctrine does not apply.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant and Eric Bolts presented at the hearing; and

2. Claimant's Exhibits 1-3 and Defendants' Exhibits A-G, I and J admitted at the hearing.

The Referee takes judicial notice of the following: the workers' compensation

insurance status of Holiday and Chateau;[1] the primary insured is Holiday; Chateau is included within that same coverage with Surety; and, Bolts dba Bolts' Floorcovering is uninsured for workers' compensation purposes.

After having fully considered all of the above evidence, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

Claimant

1. At the time of hearing, Claimant was 56 years of age and living in Horseshoe Bend, Idaho. His formal schooling is limited. Claimant left school during ninth grade in order to help his mother and siblings. He first worked at a sawmill. Later, Claimant worked primarily as a bricklayer. Approximately twenty years ago, Claimant lost his left thumb while tying rebar at a construction site; subsequently, his right big toe was grafted onto his left hand. Claimant then began his vocation as a carpet layer.

2. For about 17 years, Claimant worked for Finer Floors, removing and laying carpet and vinyl. He also did tile work. He was injured at Finer Floors while "packing some carpet" and walking on a "wobbly step." Hearing Transcript, p. 16. His head and right arm were injured; he also lost some teeth. Claimant returned to Finer Floors doing light-duty work.

3. Claimant testified that after he left Finer Floors he did not initially look for work. However, "[l]ater, I was kind of forced into going and figure out something. I was losing everything." *Id.* Though not exactly clear as to how and when, Claimant met Paul Pierce [Pierce] through his work at Finer Floors. Prior to his July 2004 accident, Claimant asserted he worked with Pierce a few times redoing carpet in interior rooms at

[1] Chateau is a retirement home; Holiday is Chateau's on-site management company. Both Chateau and Holiday were insured by Liberty Mutual Insurance Company.

Chateau and "a few" other carpet laying jobs. *Id.* at 26. Claimant testified that he had no other paying jobs. Claimant used his left hand for the work he did with Pierce, "[a]nd I was getting pretty good with my left. I couldn't do a whole lot with my right. But I could do a lot with my left." *Id.* at 27.

4. Claimant testified that he had "just box of tools." *Id.* Pierce "provided stuff like bar stretchers, saws, staple guns, you know, tackers. He had all that stuff that we use for the jobs." *Id.* Claimant further stated Pierce directed the work and he would not work apart from Pierce. Also, Pierce "just wrote me out a check. And I never did see what he ever got." *Id.* at 29.

5. Claimant described how he came to do the July 2004 carpet work at Chateau. At an earlier unspecified date in summer 2004, Claimant and Pierce were installing carpet in a room at Chateau but ran short of carpet. At the same time, Holiday's in-house carpet crew was laying carpet on other floors. Upon returning a week later, Claimant and Pierce noticed the in-house carpet crew had departed without completing its work. Bolts then successfully "bid on that [unfinished] job." *Id.* at 30.

6. Claimant understood Bolts would pay him and Pierce "$150 to do each hall" and John, no last name provided, was to receive $100. The job entailed pulling up old carpet and installing new carpet in three hallways; each hallway was about 100 feet in length. Pierce's son Shane was also involved.

7. Claimant described the Chateau job. He began work at 5:00 p.m. on July 21, 2004, as instructed by Bolts. Bolts was there and "he just told everybody what to do." *Id.* at 32. Further, Bolts "did everything with us there." *Id.* Claimant had his own "steering tool and a knife." *Id.* Bolts provided a "real heavy machine" to pull up the

carpet and some trowels and scrapers. *Id.* Holiday provided either all or some of the glue. Bolts may have provided additional glue. An entire hall was completed that first work session and the work proceeded into the early morning hours of the next day:

> And everybody chipped in. And everybody just went to it. We got it done because it was kind of a sticky mess, though. It was kind of a surprise for all of us.

Id. at 35. The same group of workers were present the next day, July 22, 2004, for the approximately half-day Claimant worked before his accident.

8. Claimant described the July 22, 2004 incident as follows: Claimant was working for Bolts and laying carpet at Chateau. He was unloading carpet from a semi-trailer; the carpet was in rolls that "should top out six, seven, maybe more [hundreds of pounds.]" *Id.* at 19. Chateau/Holiday provided the carpet and either rented or owned the semi-trailer wherein it was stored. Claimant testified:

> "We [Claimant and Pierce] just walked out to unload the carpet and hooked a chain to it and started pulling it out. And that's all I remember. It just come out and mashed me."

Id. at 20. The chain was tied to the backside of the carpet and a van owned by Pierce was used to pull the chained carpet out of the semi-trailer. Claimant could only remember that "John's father" owned the chain; Claimant could not remember the last name of John [another worker.] *Id.* at 20. Claimant stated that they were using the van and chain "[b]ecause we didn't have no Hyster." *Id.* at 21.

9. Claimant's next memory was waking up in the hospital, three days later. He had suffered numerous injuries: head, neck, back and left leg. The back of his head was fractured and required stitches. Regarding his neck, "[f]our vertebrae are messed up, crushing some of my nerves." Regarding his back, "I think a couple of disks is messed

up in the back." *Id.* at 22. Finally, his leg was badly broken and required surgery. Claimant continues to wait for further neck surgery.

10. Claimant stated that, while he was hospitalized, Pierce brought him $250 in cash for the Chateau work: ". . . said Eric [Bolts] wanted me to have it." *Id.* at 35. Claimant has been unable to work since his Chateau accident.

11. At hearing, Claimant described himself as "slow." *Id.* at 23. Claimant takes various medications: hydrocodone for pain, medication for hand and neck nerve damage, and an antibiotic. Claimant testified that the pain medication has "completely slowed down, slowing down worse [his thinking and memory.]" *Id.* at 24.

12. Claimant described the work on July 21 and the unexpected overly "sticky" glue and the old carpet at Chateau:

> My opinion is they probably used the wrong glue. But I don't know. Every carpet has a special kind of glue. So I don't know what that requirement was for that.
>
> ***
>
> It was real sticky. And it didn't release none, like the rest of the carpet [the upstairs carpet on his previous Chateau job.]

Id. at 41. Once the carpet was pulled up it was disposed of in a dumpster outside the building.

Claimant further described the laying of the new carpet:

> Well, we had to pull the carpet off the semi, roll it out in the street about 100 feet, cut it, and roll it the long ways, like a snake. And about six, seven people, somewhere in there, we grab it. And everybody carried it in, like a snake. Maybe everybody got, like 10, 20 feet of it. It was hard. But, you know, it was the smartest way to do it.

Id. at 42, 43. The new carpet was set to one side. New glue was put down over the old sticky glue and the new carpet was put down. However, there were "a lot of lumps" that the men had to work out: "So it took a lot of people." *Id.* at 43.

13. Claimant testified that the carpet roll that fell on him was the second roll he had helped unload. Claimant and Pierce were doing the unloading on July 22. Usually a Hyster is used to unload carpet. In its absence the men [Claimant, Pierce, and another worker] decided to proceed by attaching a chain to the carpet, and using the van to pull it out of the semi-trailer and down to the ground. *Id.* at 60. However, on July 22:

> For some reason, this one twisted some way. And it came my way or something – that's all I can remember – after they were pulling it out.

Id. Claimant testified the van was identified with a magnetic "Bolts Floor Covering" sign on its side.

14. Claimant understood the $250 he received from Pierce was from Bolts:

> He [Pierce] told me Bolts wanted me to have it, you know, because I had a kid at home, you know. He was – you know, he felt that I needed to have some money for my kid or something.

Id. at 64. Claimant testified Pierce "always bid his own jobs as far as I know." *Id.* When queried as to why, then, Pierce would have Bolts bid a job, Claimant responded:

> I think – I really don't understand that. I know he [Pierce] turned Eric [Bolts], at that time, into [sic- on to] a few jobs.

Id.

15. Bolts described his business, established in March 2004, as follows:

> Sales and installation of carpet, resilient flooring products, and window coverings.
>
> ***
>
> Basically, I have a showroom. And I offer a variety of different products. And customers can walk in. They choose their product. And I sell them

> their product to go into their home, sometimes remodels, depending on the situation.

Id. at 66, 67. He testified that he knew the "mechanics" of laying carpet but was "very green." *Id.* at 67. Further, he has a list of "qualified recommended installers from a company here in Boise by the name of Prosource" and has used more than one installer from the list. *Id.*

16. Bolts testified that he typically provides an installer with a work order: "the name, the address, and basically the areas that need to be completed." *Id.* at 68. Upon completion, the installer submits a bill to Bolts:

> And it's a detailed bill. It breaks down any type of furniture removal or any kind of floor prep or anything that was out of the ordinary. And they break it down. It's kind of a nice little list. They just check off whatever products on that list they had to do.

Id. at 69. Bolts would then issue an IRS Form 1099.

17. Bolts testified that he first acquired workers' compensation insurance in approximately July/August 2004 from the State Insurance Fund; this was when he started "doing work for another company." *Id.* at 70. He testified that the policy did not cover anyone because he does not have "any employees." *Id.* at 71. When his quarterly paperwork came:

> I put a zero right down the line [line indicating if an employee should be added.] And then I wait. I guess next year they'll issue me a bill. And it's a gray area for me as far as how they do their documentation.

Id. He further testified that he followed his insurance broker's advice and, initially, had only "general liability" insurance. *Id.*

18. Bolts first knew of Pierce from the Prosource referral list. Bolts had been awarded a restaurant job for tile and Pierce "agreed to it." *Id.* at 72. He asserted Pierce

did not, at that time, work solely for him but was busy with "commitments across the valley." *Id.*

19. Bolts denied bidding jobs for Pierce. He testified that Pierce had "a lot of connections" and would tell him "when he ran across something that looked like there was an opportunity" for Bolts to sell his product line. *Id.* at 73. Bolts described the relationship between he and Pierce:

> So if he could start bringing some work my way, I'd kind of trade him the administrative part of the business because he's getting to the point where he's getting tired. And he'd like to get to a point where he's actually running the show instead of being out on his knees.

Id. at 74.

20. Bolts testified that he first met Claimant through Pierce. Also, Claimant had worked for him prior to the Chateau accident:

> I remember [Claimant] was assisting Paul on – I had given Paul a job in Meridian. So he was along with Paul to help him get the job done.

Id. at 75. Bolts further testified that he generally paid Pierce the total amount. However, there were two incidents wherein he recollected writing a check directly to Claimant; Pierce either "hadn't been to the bank" or "didn't have funds." *Id.* at 76.

21. Bolts testified Pierce told him "there was a sizable job to do over there [at Chateau.]" *Id.* at. 76. Bolts then measured and submitted a bid to Holiday for the job: installation of carpet in 3 hallways, dining area, 2 administrative offices, library, and sitting room. Bolts "agreed with the management at Chateau that, when I completed the three hallways, that [we] would get a progressive payment on that." *Id.* at 77. He then hired Pierce to do the carpet installation in the hallways:

> And, basically, with his support with Chuck [Claimant] and a couple other people, once we got the hallways done, that was basically enough to get the ball rolling. And then I was going to take it from there and figure out how I was going to complete the rest of the job.

Id. at 78. Bolts testified that he worked out the $150 figure per hallway with Pierce. He further stated Pierce "also told me that he [Pierce] may not be able to support the effort 100 percent. But he would be there to stand by to make sure everything went as planned." *Id.* at 78. When queried as to why Pierce's effort might not be total, Bolts replied:

> Because he was busy. He had other accounts going on. And the reason he was able to come out there and do that was because of the – it was done after dinnertime there.

Id. at 79.

22. Bolts testified that the glue at the Chateau job was "a specific glue" that is "very durable." *Id.* Moreover, had he known about the glue "I probably would have not taken the job." *Id.* Bolts described the carpet as "very, very very challenging." *Id.* at 79. The supply store suggested using "a drum roll assembly;" when that proved unsuccessful "the traditional way of just manually pulling it up" was utilized. *Id.* at 80. Bolts testified that he helped with the carpet pull-up, along with Claimant, Pierce, and two other workers.

23. Bolts testified as follows concerning payment to Claimant for the Chateau job. He paid Claimant because Claimant "was in need of some money and "I owed him that money, part of our agreement;" cash was used "because how is somebody going to cash Chuck Brown's check?" when he is hospitalized. Defendant Bolts neither received

an invoice from Pierce nor did he pay Pierce for the Chateau job; all profit "had been just eaten up." *Id.* at 82.

24. On cross-examination, Bolts testified that when he bids on a job, the cost of installation is included. Also, he testified he never received a bill from Claimant nor had he ever directly given Claimant a job; any work Claimant did was through Pierce. Bolts continues to do business with Pierce.

DISCUSSION AND FURTHER FINDINGS

Idaho Code § 72-102(11) defines an "employee" as any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer. I.C. § 72-102(12)(a) defines an "employer" as any person who has explicitly or impliedly hired or contracted the services of another. It includes contractors and subcontractors. It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the businesses there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed. If the employer is secured, it means his or her surety so far as applicable. I.C. §72-102(16) defines "independent contractor" as any person who renders service for a specified recompense for a specified result, under the right to control or actual control of his or her principal as the result of his or her work only and not as the means by which such result is accomplished.

The underlying principle of Idaho's workers' compensation law is the employer-employee relationship. Without that relationship, there is no coverage. *Shriner v. Rausch*, 141 Idaho 228, 108 P.3d 375 (2005). A four-factor test is used to determine whether a worker is an employee or an independent contractor:

> There must be evidence of the employer's right to control the employee; 2) the method of payment i.e., whether the employer withholds taxes; 3) whether the master or servant furnishes major items of equipment; and 4) whether either party has the right to terminate the relationship at will, or whether one is liable to the other in the event of preemptory termination.

Shriner at 108 P.3d 378. [Citations omitted.] This "right to control test" is a balancing test. When doubt exists as to whether a worker is an employee, the Idaho Workers' Compensation Act must be given a liberal construction in favor of finding coverage. *Olvera v. Del's Auto Body*, 118 Idaho 163, 165, 795 P.2d 862, 865 (1990).

Employee or Independent Contractor

25. In the present case, there was a tangled web of relationships among and between Claimant, Pierce and Bolts. The three men had various prior business dealings. However, it is not necessary to tease out the prior relationships on prior jobs. As the *Shriner* Court held:

> There is substantial and competent evidence supporting the Commission's determination that Shriner was an independent contractor in his relationship with Rausch *on the projects at issue*. The relationship of Rausch and E & H on other business dealings *does not change* the result in this case. [Emphases added.]

Shriner 108 P.3d at 379. Thus, what is necessary in this matter is to determine the legal relationship for the particular issue at hand – the *existing relationship between Claimant and Bolts on the Chateau job*.

26. The first element in the "right to control test" is direct evidence of the right to control. Here, Bolts went to Chateau, measured the areas needing work, and made a successful bid for the rather extensive project: hallways, dining area, administrative offices, library and sitting room. This job was different than previous jobs Bolts had been involved in because here, Bolts was not selling product, but installing it in

the hopes of securing contracts of *sales* and installation in the future. Bolts then put together a crew of at least four men: Claimant, Pierce, Shane [Pierce's son], and John. Bolts was present and dictated and participated in the work; indeed, he acknowledged Pierce might not even be present during the entire job. Bolts decided precisely where and when work would begin and end; the first job session began in the hallways on July 21, 2004, at 5:00 p.m. extending into the early hours of July 22. Claimant was not free to pick the days he wanted to work or the number of hours. Moreover, the decision as to how exactly the project would proceed lay with Bolts; after the hallways were completed then he would "*figure out how I was going to complete the rest of the job*." *Id*. at 78 (Emphasis added.) Clearly, Bolts' active work participation with his chosen crew – a crew that worked in accordance with his wishes as to time, place and the order of given tasks – demonstrates his actual exercise of control, let alone his *right* to control arising out of his bid with Holiday.

27. Second, is the element involving payment and method of payment. Here, Claimant, while hospitalized, received a cash payment from Bolts because he owed it to him for the work performed and because Bolts felt a certain amount of sympathy for Claimant's situation. [Pierce physically delivered the payment.] There is no evidence of discussions between Bolts and Claimant concerning withholdings. As the Court held in *Roman v. Horsley*, 120 Idaho 136, 138, 8124 P.2d 36, 38 (1991), payment can be a neutral factor even if there is a failure to make provision for withholdings:

> The Commission further found that there was no discussion between Horsley and Roman regarding the withholding of taxes. While it is true that failure to make provisions for withholding taxes points toward independent contractor status, it is not necessarily a determining factor. This case is similar to *Burdick v. Thornton*, 109 Idaho 869, 712 P.2d 570,

> in which this Court found that the fact that there was no withholding of taxes did not diminish the neutrality of the payment factor. [Citation omitted.]

This Claimant is similar to the claimants in *Roman* and *Burdick*. The fact that the record is silent as to withholding is not determinative of Claimant's status and is considered to be a neutral factor in that regard.

28. The third element is the furnishing of major items of equipment. Here, despite the crew of men, the removal of the old carpet proved "very, very, very challenging." *Id*. at 79. Recognizing that manual labor alone was futile, Bolts obtained a "real heavy machine" to pull up the carpet. Additionally, the van that pulled the carpet out of the semi-trailer had a Bolts Floor Covering magnet sign on its side, even though Pierce owned it. While standing alone, this fact may be of little relevance, but when taken in context with Pierce's and Bolts' business relationship, it can reasonably be inferred that the van was supplied for Bolts' benefit. Bolts supplied the major items necessary for completion of the Chateau job.

29. The fourth and final element of the right to control test is the right to terminate the employment relationship at will and without liability. Here, the record is silent; there is neither a written employment agreement nor alleged specific statements between Claimant and Bolts. As was noted in Claimant's briefs, *Jenkins v. Boise Cascade*, 141 Idaho 233, 108 P.3d 380 (2005) enunciates the "at-will" presumption:

> Unless an employee is hired pursuant to a contract that specifies the duration of the employment or limits the reasons for which an employee may be discharged, the employment is at the will of either party and the employer may terminate the relationship at any time for any reason without incurring liability. [Citations omitted.]

Jenkins at 387. Here, there is no evidence of any agreement, oral, written, or implied that

amounted to a contract for a specified term or limited the means of discharge. Nothing in the record rebuts the presumption that Claimant was subject to at-will employment.

30. To conclude, the Referee finds that balancing all four elements of the "right to control test" firmly establishes Claimant's employee status for the particular job at issue. Bolts unambiguously exercised his right to control his crew and provide the necessary major equipment. The element of payment is neutral. There is no evidence of a contract term that destroys the "at-will" presumption. The Referee finds that Claimant was an employee of Bolts for the July 2004 Chateau job.

Statutory Employer

The next issue is whether Holiday is a statutory employer of Claimant. Idaho Code § 72-216(1) provides in pertinent part:

> An employer subject to the provisions of this law shall be liable for compensation of a contractor or subcontractor under him who has not complied with the provisions of section 72-301 in any case where such employer would have been liable for compensation if such employee had been working directly for such employer.

The recent case of *Venters v. Sorrento Delaware, Inc.* 141 Idaho 245, 108 P.3d 392 (2005), though more complicated factually and legally than the present matter, provides an excellent framework for analyzing and understanding the issue of statutory employment and its place in Idaho's Workers' Compensation Act.[2]

The facts were as follows in *Venters*. Sorrento, a Delaware corporation, operated a cheese factory in Nampa. As part of the cheese-making process, a large amount of wastewater was produced; some of the wastewater was discharged onsite. In order to dispose of the remaining wastewater, Sorrento contracted with surrounding farmers. In

[2] In the even more recent case of *Gonzalez v. Weston* 2005 Opinion No. 112, the Court wrote the case is "controlled by our recent opinion in *Venters* [citation omitted.]"

these contract situations, Sorrento paid the farmer an annual amount in order to come onto the farmer's land and pump the wastewater into large storage tanks; the farmer used the water for irrigation. The storage tanks and related pumping equipment were owned and maintained by Sorrento. Montierth Farms [Montierth] was a local farmer that had entered into such a contract with Sorrento. Sorrento also contracted with 3-C Trucking to haul the wastewater from the Nampa factory to the farmers' land; Sorrento did not maintain its own trucks for transporting wastewater.

Stanley Venters [Venters] was an employee of 3-C Trucking. While delivering wastewater from Sorrento's cheese factory to Montierth, Venters was run over on the Montierth site by another truck driver. Venters died and his survivors brought separate wrongful death actions against Sorrento and Montierth. Sorrento and Montierth each moved for summary judgment on the basis of their being statutory employers and immune from tort liability. The district court found in their favor.[3]

On appeal the two cases were consolidated and the Idaho Supreme Court held, among other things, that while Sorrento was a statutory employer, Montierth was not.[4] The Court reasoned that the policy of the Workers' Compensation Act is to provide employees definite relief for work-related injuries. In order to counterbalance the employers' burden of providing relief, the Act limits the employers' exposure to tort liability. These limitations make up the "exclusive remedy rule." I.C. § 72-223 clearly excludes two kinds of parties, known as statutory employers, from third party liability:

> Such third party shall not include those employers described in section 72-216, Idaho Code, having under them contractors or subcontractors who

[3] Montierth also argued it had no duty to decedent.

[4] However, the Supreme Court found summary judgment was appropriately granted in favor of Montierth, in that there was no material issue of fact concerning either (1) breach of a duty of care or (2) causation.

> have in fact complied with the provisions of section 72-301, Idaho Code; nor include the owner or lessee of premises or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being any independent contractor or for any other reason, is not the direct employer of the workmen there employed.

Venters 108 P.3d at 395, 396.

The *Venters* Court then held as follows regarding Montierth. A statutory employer is not the mere owner of the premises; rather, the owner must be doing work that pertains to its business and is carried on for pecuniary gain. In *Venters*, the work being performed was the work of transporting wastewater. Montierth was not in the business of hauling water for monetary gain. Therefore, Montierth was not a statutory employer and hence not entitled to tort immunity. *Venters* at 108 P.3d at 397.

The *Venters* Court reached a different holding regarding Sorrento. The issue as to Sorrento related to whether it was an employer hiring or contracting a contractor. A statutory employer is liable to the employees of its contractor whenever a contractor is liable. Therefore, an employee can have more than one employer. The Court wrote that Sorrento is probably both (1) an employer of a contractor and (2) owner of the premises. However, the Court focused on the employer/contractor prong [because of the District Court's ruling.] The Court held that Sorrento was a statutory employer of decedent Venters because of its contractual relations with 3-C Trucking. Nonetheless, Sorrento's need to pay workers' compensation benefits did not come into play because 3-C Trucking was insured.

31. In the present matter, Holiday is more like Sorrento than Montierth. However, Bolts, unlike 3-C Trucking, is uninsured. Holiday contracted with Bolts to install carpet. Claimant was an employee of Bolts, and therefore, an employee of

Holiday. Bolt's failure to have workers' compensation insurance brings Holiday's liability into play.

32. Also, Holiday is a qualifying proprietor. It is in the maintenance business; indeed, it is only because Holiday's in-house crew failed to finish the carpeting work, that Holiday contracted with Bolts. Once again, Claimant is an employee of Holiday. Moreover, it might well be argued that Claimant's situation is precisely what the Act seeks to avoid i.e., to prevent Holiday from avoiding liability by contracting the difficult removal of the sticky carpet to uninsured Bolts.

33. In conclusion, being mindful of the liberal construction afforded injured workers to find coverage, Holiday is Claimant's statutory employer who – because of Bolts' uninsured status – is liable for workers' compensation benefits.

CONCLUSIONS OF LAW

1. Claimant was an employee of Bolts on July 21 and 22, 2004, while engaged in carpet work at Chateau.

2. As Bolts was uninsured, Holiday at all relevant times herein was Claimant's statutory employer, and as such, is liable for all workers' compensation benefits to which Claimant may be entitled.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own and issue an appropriate final order.

DATED this ___28th _____ day of December, 2005.

INDUSTRIAL COMMISSION

___/s/_____
Michael E. Powers, Referee

ATTEST:
____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _6th__ day of __January_____ 2006, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION** was served by regular United States Mail upon each of the following persons:

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